C. W. 71 & 72—658,414—21-11-29.

C.F. 71 & 72.

19 33 .

Department of Ln Delt

OFFICE Bezwada

STATION Madras

No. 3429

Dated 11-12-33

A 2 3 5 4 / 33

To whom sent	Date	Initial
	Given for copying	
	Copied	
	Examined	
	Signed	
	Given for despatch	
	Despatched	
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Pages in the file 7	To be destroyed on*	

(SUBJECT.)

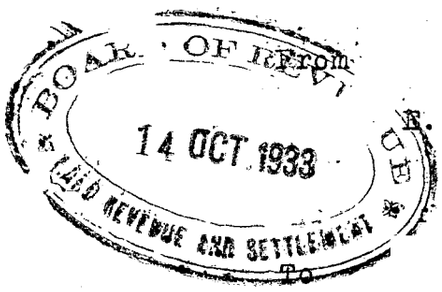
Petkai (Sanki Ramaya) Ondtur Ta- Vi.
Proposes Plate Appropriation Banta- Im.

* Not to be filled in in the case of permanent records.

17-3656

Ref.A3.No.173-31.

South Kanara Collector's Office,
Mangalore, 10th October 1933.



From

E. M. Gawne, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.

Sir,

Escheat - (South Kanara) - Puttur Taluk - Volamogru village - S.Nos.63/1B,4,5 & 9, 77/1 & 2 and 229 - Deceased owner Appaya Banta.

****

The property known as 'Kelagina Palapinja' described in the margin belonged to one Appaya Banta, who was governed by the Aliya-Santhana Law of Succession. In January 1856, this Appaya Banta mortgaged the property in favour of one Thimmappa Rai with possession for a consideration of Rs.200/- received by him, and in 1862, he again executed another deed called 'Gonchu-patra' (supplemental mortgage) in favour of the mortgagee Thimmappa Rai for Rs.175/-. Finally, on 5.4.1866, he made over the property to one Kariappu Banta by means of a usufructuary mortgage for a period of 50 years in consideration of a sum of Rs.562/-. For the recovery of possession of the property, this Kariappu Banta filed a suit, No.227/1867 on the file of the District Munsiff's Court, ----- Puttur, against both the mortgagor Appaya Banta and the original ----- mortgagee Thimmappa Rai. One Devi and her brother Mahalinga were, on their own application, added

S.No.	Classification.	Extent. A. C.	Assessment. Rs. A.
63-1B	Wet	4 53	34. 0
4	Wet	0 85	1.11
5	Wet	0 64	1. 5
9	Wet	1 20	2 6
77-1	Wet	0 56	2.13
2	Wet	0 61	1. 4
229	Dry	0 13	0. 2
	Total:	8 52	43. 9

on as supplemental defendants as they contended that they were the children of Akkappe, uterine sister of Appaya Banta, who, they alleged, had no right to encumber the property by himself. At the trial, however, they failed to prove their relationship with the mortgagor and the Court decreed delivery of possession of the property to the plaintiff on his paying the original mortgagee his dues. Some time after the disposal of the suit, Appaya Banta left for Coorg, where he appears to have died.

2. The property was redeemable from the usufructuary mortgage in 1916. A few months before the expiry of the period of redemption, i.e., on 29.9.1915, one Subbappu, son of the aforesaid Deyi, and eight others, alleging themselves to be the heirs of the deceased owner Appaya Banta, sold the right of redemption to Jathappa and Narayana, minor sons of one Chennappa Rai. The mortgagee Kariappu Banta, had died by that time and as such, the mortgage money together with the value of improvements was tendered in 1916 on behalf of the minors to the deceased mortgagee's sister Akku and her son Subbanna Rai. But they refused to accept the amount and deliver possession of the property on the ground that the vendors Subbappu and others were not the legal heirs of Appaya Banta. Instead of fighting the case out in a Court of Law, both parties referred their dispute to Arbitration on 16.7.1916, the arbitrators being Messrs. Kolahalli Shiva Rao, Savur Shiva Rao and K. Subba Rao - all influential Vakils of the Puttur bar. On 4.12.1917, the arbitrators passed an award to the effect that the plaintiffs were entitled to recover possession of the property on payment to the defendants of the mortgage amount plus Rs.125/- for value of improvements. In doing so, the arbitrators held that the plaintiffs vendors Subbappu and others were the heirs of Appaya Banta and that the finding of the District Munsiff in suit No.227/1867, referred to in paragraph 1 above, was <u>obiter dictum</u> and was not based on

evidence. Inspite of certain objections of the defendants, one of which was that the award was passed long after the inquiry by the arbitrators, the award was passed into a decree of the District Munsiff's Court, Puttur, in O.S.681/17 on 21.6.1918. This decree appears to have been up-held both in appeal and in second appeal.

3. While matters stood thus on the one hand, the heirs of the deceased mortgagee Kariappu Banta (defendants in the award decree), who were apparently dis-satisfied at the behaviour of the arbitrators, took a different mode of getting possession of the property. They produced Manjappa Rai and 2 others, residents of Coorg, who called themselves the heirs of the deceased Appaya Banta and executed on 10.11.1916 a second mortgage in favour of one Subbappa Rai, a name-lender. They tried to render the award abortive by saying that they had received the mortgage amount from the above said Subbappa Rai and that they had already delivered possession of the property to him, but in vain. Having failed in this attempt, they made Subbappa Rai file a separate suit - O.S.726/1918 on the file of the District Munsiff's Court, Puttur, for a permanent injunction restraining the plaintiffs in the award decree from obtaining possession of the property. But the suit was dismissed.

4. The property was, after the disposal of the above suit, taken possession of by Jathappa and Narayana, plaintiffs in the award decree and it now stands registered in their names. Subsequent to this, there has been dispute between the above plaintiffs Jathappa and Narayana on the one side and one Yelianna Rai, their father's nephew, on the other. He appears to have contended that the property was purchased by his uncle Chennappa Rai out of his family funds and not with the money of his minor sons. The matter went up to the Civil Court, where Yelianna Rai succeeded. The property is reported to be in his enjoyment, but an appeal is said to be pending in this matter in the High Court. Government are not, however, concerned in this dispute. The point for

consideration is whether the property is liable to escheat and if so, whether Government should assert their claim. Government are now concerned only with the award decree, in which, the arbitrators brushed aside the argument that the plaintiffs' vendors Subbappu and others were not the heirs of Appaya Banta merely with a remark that the finding in the suit of 1867 was an obiter dictum. The plea of relationship went to the very root of the case and if it had been proved, the arbitrators ought to have held that Appaya Banta could not, by himself, have alienated the property, without the heirs being party to the mortgage. On the other hand, I find that every one of the documents referred to in paragraph 1 above was executed by Appaya Banta alone. If really, he had any heirs, it is a wonder why they left him alone to alienate their family property, without their being parties to it. Again, having come forward as supplemental defendants in the suit of 1867, I think that they would not have quietly acquiesced in the decision of the Court that they were not the heirs of Appaya Banta. I am, therefore, inclined to think that the deceased Appaya Banta left no heirs and that the property is liable to escheat.

5. The only document in support of the Government contention is the decree of 1867. It is more than sixty years since Appaya Banta left the district for good and the present Tahsildar of Puttur, who personally held the enquiry in this case, was unable to gather any useful evidence on behalf of Government. The petitioner K[illegible] Rai, at whose instance the escheat enquiry was started, and who has given a long history of the case, was a party to the award decree (9th defendant). His evidence is of very little value. Another man, Madanappa Rai. aged 75 years, who was examined by the Tahsildar, first stated that Appaya Banta left heirs and even went so far as to give a genealogy of the deceased. Of course, he subsequently retracted and said that he was influenced by Channappa Rai to give the former statement and

that Appaya Banta had in reality no heirs. I think, it is unsafe to take his evidence as a guide. The only useful oral evidence is that of one Devanna Banta, a man aged 86 years. He says that Deyi, referred to above, was no sister of Appaya, who left no heirs. The only other aged man in the village, one Maila Rai, aged 82 years, who knows the family, says that he does not remember about the relationship. On the whole, the evidence is meagre and quite insufficient to prove Government's case.

6. There is yet another allegation in this case and that is, that the arbitrators passed the award decree for a monetary consideration, in that they asked the defendants to pay a sum of Rs.500/- to the Puttur High School and that the latter having refused to pay the amount, the offer was made to the plaintiffs, who paid the amount, in consideration of which the decree was passed. I got the Tahsildar to hold a confidential enquiry in the matter, which has been done and I am satisfied that it is impossible to prove this allegation. The only course left open for Government is not to pursue the matter. As, however, the property is valued at Rs.3,000/-, I refer the matter to the Board for order under paragraphs 3 and 4 of B.S.O. 197.

1176-1179-BSO Vol IV.

Your obedient servant,

Collector.

11.10.33

7

C.F. 16—20,000—19-11-29.

DRAFT FOR APPROVAL.

Enclosures.

Despatch No.

When given to fair copying

Fair-copied by

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When despatched

Office.

A Register No. 3656/33, ~~dated~~

From

Subject.

Escheat (Sinna Nainara) Matter re-
valamogoru re- Properties of late
Appayya Shanka

To

THE

Ascd(in)
5-12-33

I 28 11/33 ✓ 6/12/11

A 12/11

Refer A-3656-33-1 dy 20 W/33.

The Collector is requested to
obtain the opinion of the local
Govt Pleader in the matter and to
submit to the Board along with
his remarks.

To the Collector of Sinna Nainara

dy 16 W/33 19.10.33

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21 OCT 1933

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9 A-3656/33

A-4347

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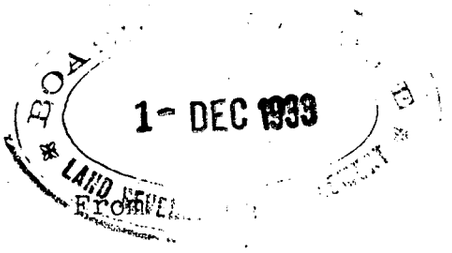

South Kanara Collector's Office,

Camp: Coondapur, dated 27th November 1933.

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

S i r,

Escheat-- (South Kanara)--Puttur Taluk--Volamogru village--Properties of late Appaya Banta.

b.7 05 Ref: Board's Ref.A.No. 3656/33--1, dated 20th October 1933.

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bb 183-1968(W) I enclose the Mangalore Government Pleader's letter No. C. 284/33, dated 21st November 1933 in the matter together with a printed copy of the Puttur District Munsiff's judgment in O. S. No. 726/1918 referred to by the Government Pleader as also a book containing printed copies of the award decree in question, the District Munsif's decree and judgment in the matter and the District Judge's decree and judgment in appeal. I have no additional remarks to offer.

Your obedient servant,

Collector.

11

C.F. 16—24,90,350—30-10-30. (6)

DRAFT FOR APPROVAL.

Enclosures.

Despatch No. ಫ·107

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When despatched

Office.

A·3656/33
~~A0's Misc~~ A·3656·33-1 dy 20/10/33 } &
Register No. , dated A 4347/33

From

Subject.

Escheat (South Kanara) matter re-vesting property - proposals of late Attayya Shenoy - Govt. orders desired.

To

THE

Rev (Cash) 3429 dy 11.12.33

The Board agrees with the Collector ~~and the Local Govt. Minister~~ in considering that the evidence on behalf of the Govt. is meagre and that the Govt have no case. The Collector is requested to drop the question of escheating the properties to the Govt.

To the Collector of South Kanara with one file return (W)

dg 9/12/33 by 9/12/33

9.12.33

Note file.

Escheat (Smt. Sharada) matter re valuation of properties of late Appayya Shanta.

A.3656/33

To AS

Please see the Collector's letter at pp 1-5 of file.

2. The question is whether the Govt should assert their claims to the properties of late Appayya Shanta, the estimated value of which is Rs 30001-.

p.5 cr

3. Both the Collector and the Govt Counsel p.5 cr p.195 of (W) that the evidence on behalf of the Govt is meagre and that it will be useless to assert the Govt's claim. The Board may agree with them and drop the matter. Forwarded.

12.12.33

dy 12/12/33 S

I agree.

Sd/- V.

M.1 Sd/- I. for I have no case.

P.12.33

Addl) To Addl)

8 - DEC 1933

Draft Sd/-

dy 9/12/33 9/12/33